

# **EXHIBIT A**

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

IN RE DEALER MANAGEMENT SYSTEMS,  
ANTITRUST LITIGATION, MDL 2817

) No. 18 CV 864

) Chicago, Illinois  
) December 13, 2018  
) 9:20 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE JEFFREY T. GILBERT, MAGISTRATE JUDGE

For the Plaintiffs: KELLOGG, HANSEN, TODD, FIGEL & FREDERICK,  
P.L.L.C.  
BY: Michael N. Nemelka  
1615 M Street, NW  
Suite 400  
Washington, DC 20036  
(202) 326-7932  
Email: Mnemelka@kellogghansen.com

MILBERG LLP  
BY: Peggy J. Wedgworth  
1 Penn Plaza  
Suite 4800  
New York, NY 10119  
(212) 631-8622  
Email: Pwedgworth@milberg.com

Court reporter: BLANCA I. LARA  
Official Court Reporter  
219 South Dearborn Street  
Room 2504  
Chicago, Illinois 60604  
(312) 435-5895  
blanca\_lara@nd.uscourts.gov

1 Appearances (continued: )

2

For Reynolds and Reynolds Company.

3

GIBBS & BRUNS, L. L. P.

4

BY: Aundrea Kristine Gulley

Brian T. Ross

5

1100 Louisiana

Suite 5300

6

Houston, Texas 77002

(713) 650-8805

7

Email: Agulley@gibbsbruns.com

8

For Computerized Vehicle Registration, Inc.; also known as CDK  
Vehicle Registration, Inc.

9

10

MAYER BROWN LLP

11

BY: Britt Marie Miller

Matthew David Provance

12

71 South Wacker Drive

Chicago, IL 60606

13

(312) 782-0600

Email: Bmiller@mayerbrown.com

14

15

16

17

18

19

20

21

22

23

24

25

1 (Proceedings taken in open court:)

2 THE CLERK: 18 CV 864, In Re Dealer Management Systems  
3 Antitrust Litigation.

4 THE COURT: For the plaintiffs.

09:19:15

5 MR NEMELKA: Michal Nemelka from Kellogg Hansen on  
6 behalf of the individual and vendor class plaintiffs.

7 MS WEDGWORTH: Good morning, Your Honor. Peggy  
8 Wedgworth from Milberg Tadler Phillips Grossman on behalf of  
9 the Dealership Class plaintiffs.

09:19:28

10 THE COURT: Okay. In the back row.

11 MS GULLEY: On behalf of the defendants, the Reynolds  
12 and Reynolds Company, Aundrea Gulley.

13 MR ROSS: Good morning, Your Honor. Brian Ross from  
14 Gibbs & Bruns also on behalf of the Reynolds and Reynolds  
15 Company.

09:19:48

16 MS MILLER: Good morning, Your Honor. Britt Miller  
17 from Mayer Brown on behalf of CDK Global, LLC, and Computerized  
18 Vehicle Registration.

19 THE COURT: Okay.

09:19:57

20 MR PROVANCE: Good morning, Your Honor. Matt  
21 Provance of Mayer Brown on behalf of CDK Global, LLC, and  
22 Computerized Vehicle Registration.

23 THE COURT: If it's a Thursday, you're here on  
24 Dealers, right, Mr. Provance?

09:20:08

25 MR PROVANCE: Right.

1 THE COURT: Because on other days, you're here on  
2 another case.

3 And, Mr. Nemelka, you're here for Authenticom and all  
4 the rest of the plaintiffs other than the Dealership Class,  
5 right?

09:20:20

6 MR. NEMELKA: That's correct, Your Honor.

7 THE COURT: Brenda, can you push that mike down on the  
8 podium.

9 THE CLERK: Yes.

09:20:27

10 THE COURT: You guys can use the mikes. Identify  
11 yourselves for our court reporter before you speak, at least at  
12 the beginning until she gets everybody's name or the face here.

13 So I'm glad to see that I'm not the only lawyer who is  
14 a deadline junkie who files things, right when the bell is  
15 ringing, but I'd rather file than have to read it. I did read  
16 everything that was filed for today.

09:21:07

17 I understand you wanted to get some things in front of  
18 me --

19 MS. MILLER: I'm sorry, Your Honor. I can't hear you.

09:21:19

20 THE COURT: You can't hear me, right. Would the  
21 microphone help?

22 MS. MILLER: Thank you.

23 THE COURT: Okay. You heard my poor joke about  
24 deadline junkies, though?

09:21:33

25 MS. MILLER: Didn't hear it.

1 THE COURT: Okay. I said I'm glad to see I'm not the  
2 only one who's a deadline junkie. I was referencing the stuff  
3 filed very recently before the hearing, including at 8:00  
4 o'clock last night; okay. But I read everything.

09:21:45

5 I'm not crazy about that system, but I understand why  
6 that happened here. I had you here on, I guess, December 6th,  
7 and people who were here at that time said they wanted to take  
8 advantage of this setting of this motion to have a more general  
9 status hearing.

09:22:00

10 And I get that. And, you know, I had said early on --  
11 well, not early on, but when I got involved and when I first  
12 started meeting with you and Judge Dow that I would set a  
13 status and then I didn't. My default was, if you wanted one,  
14 you'd file a motion for one. So, you know, we're getting  
15 together today, and we can address some things today and move  
16 this thing forward a little bit.

09:22:16

17 On my agenda, based upon what has been submitted to  
18 me, I've got -- and I just want to make sure there's nothing  
19 else -- I have Reynolds' motion to reconsider. So I've got the  
20 opening brief and I have a response. I saw the stipulation  
21 with respect to a briefing schedule.

09:22:40

22 I'm not actually sure. Did we ever enter that  
23 briefing schedule, Brenda? Because that would have a reply due  
24 on December 19th. They sent that in very recently.

09:22:55

25 But I could ask Reynolds whether they want to reply.

1 I could address it somewhat in midstream here, too, frankly,  
2 because now I've heard what Reynolds has to say and what  
3 plaintiff had to say and maybe I could direct traffic a little  
4 bit. So I have that motion to reconsider.

09:23:17

5 And I cleared out my docket this morning. I had other  
6 things scheduled. I had you for 15 minutes on the motion, but  
7 I cleared some stuff out, so we're going to have some time  
8 together.

09:23:31

9 I have the issue of the discovery that's been served  
10 after May 25th, and the extension of the discovery schedule  
11 that I'd like to address somewhat here. I don't think we have  
12 a briefing -- nobody suggested a briefing schedule on the  
13 discovery issue because that was in these dueling status  
14 reports, right?

09:23:50

15 MS WEDGORTH Correct, Your Honor.

09:24:05

16 THE COURT: Okay. I want to address the motion -- I  
17 want to address what motions I still have under advisement that  
18 are on discovery to make sure I have everything right. I know  
19 that I have plaintiffs' motion, I guess the Dealership Class  
20 plaintiffs' motion, right, to clawback with respect to CDK's  
21 clawback documents, that's what I had everything submitted  
22 in-camera on?

09:24:15

23 MS WEDGORTH Yes, Your Honor. And I think they  
24 submitted 100 sample documents.

25 THE COURT: Right. And I've looked at a bunch of

1     them, and I think we need to address that in some way.

2             There is a motion that's either currently being  
3     briefed or is already briefed. I'll bring that out. Hold on.

4             (Brief pause).

09:24:37

5             THE COURT: I have plaintiffs' motion to compel FTC  
6     documents, is that something that's pending now?

7             MS MILLER: I believe that's part of the clawback  
8     motion. There were two separate motions filed on the same  
9     issue, FTC documents.

09:25:05

10            THE COURT: FTC documents.

11            MS MILLER: Yes, Your Honor.

12            THE COURT: Okay.

09:25:15

13            MS WEDGORTH With regard to that one, though, Your  
14     Honor, I don't think any of those documents are in-camera for  
15     review, the FTC motion. They are certainly linked in that all  
16     the documents were produced to the FTC, is our understanding.  
17     The clawback motion came first due to the procedural status of  
18     the way we were handling them.

09:25:33

19            THE COURT: And is the FTC document motion, does it  
20     reference like 1800 documents, or something like that?

21            MS WEDGORTH Correct, Your Honor. Yes.

22            THE COURT: Okay. I have that, too.

09:25:47

23            And I've got plaintiffs' motion to redesignate  
24     documents from highly confidential to confidential. There was  
25     a new defendants' motion to compel filed on November 30th, or



1 am I misreading that?

2 MR PROVANCE Your Honor, that's a motion for  
3 protective order.

09:26:02

4 THE COURT: Protective order. And did I set a  
5 briefing schedule on that?

6 MS MILLER: It's fully brief.

7 MR PROVANCE Yes, it's fully brief.

8 THE COURT: It's fully briefed now?

9 MS MILLER: Yes, we filed our reply on Tuesday.

09:26:13

10 THE COURT REPORTER I'm sorry, and your name?

11 MS MILLER: Britt Miller.

12 THE COURT: Okay. And then I have this motion to  
13 reconsider. Any other motions that are on you guys horizon  
14 that I haven't mentioned here?

09:26:22

15 MS WEDGORTH Not that are currently filed, Your  
16 Honor.

17 THE COURT: Okay. Well, that's all right.

18 MR NEVELKA We agree.

19 THE COURT: Okay. Good.

09:26:42

20 MR PROVANCE Your Honor, there are --

21 THE COURT: I think I have to set some other dates  
22 here, too, in terms of getting together again to deal with some  
23 of these issues.

24 Okay. Yes. Who said that? Mr. Provance?

09:26:49

25 MR PROVANCE Yes. Your Honor, there is one aspect

1 of the Court's rulings on defendants' omnibus motion to compel  
2 that was kept under advisement with respect to the Dealer's  
3 objections to RFP's and search terms related to data security,  
4 system integrity and system performance issues related to  
5 third-party integrators.

09:27:10

6 THE COURT: Yes. I went through those orders  
7 yesterday, actually, and I saw -- I saw that, but I figured --  
8 you know, I had said I needed to set an in-court hearing on  
9 that to address these issues with the parties, because I  
10 couldn't figure out what everybody was saying.

09:27:28

11 There were a couple other motions that I said, here's  
12 my thoughts, talk more and then come back to me. I was leaving  
13 that on you; all right.

14 MS WEDGORTH And, Your Honor, we are speaking on  
15 that.

09:27:41

16 MR NEVELKA: We are speaking on those issues.

17 THE COURT: Okay. I'm just taking down a note here.  
18 (Brief pause).

19 THE COURT: Okay. So I need to address that motion,  
20 it's still under advisement, a date and so forth, and the other  
21 things I said. Anything else pending or immediate?

09:28:37

22 MS WEDGORTH Not currently pending, Your Honor.

23 THE COURT: Okay.

24 MS GULLEY: There's nothing currently pending or  
25 immediate. You saw -- and this is Aundrea Gulley, by the way.

09:28:49

1 You saw that there are issues that we expect are coming. One  
2 that is more immediate is, there was a third-party that filed a  
3 motion to quash in the Southern District of Florida and there's  
4 going to be a motion to transfer that.

09:29:06

5 MR PROVANCE Your Honor, actually the motion has  
6 been filed to transfer. CDK served a deposition subpoena on a  
7 third-party. They moved for an order quashing the subpoena,  
8 but they moved in the Southern District of Florida, and as of  
9 yesterday we filed a motion to transfer. I have a copy of it  
10 if Your Honor would like to see it. But, you know, in our  
11 view, that issue should be coming to the Northern District of  
12 Illinois.

09:29:25

13 MS MILLER: We've also been informed, Your Honor,  
14 that one of the other third-parties who Your Honor recently  
15 ruled on a -- on the motion for protective order with respect  
16 to dominion, that they are not going to be producing documents,  
17 and, in fact, are going to appeal Your Honor's ruling.

09:29:38

18 THE COURT: Okay. Well, I think I may have calibrated  
19 my order. I might have said 15 days, or something like that,  
20 or something else, because I wanted to make sure that if  
21 anybody was going to appeal --

09:30:04

22 Where's my order?

23 (Brief pause).

24 THE COURT: Here it is. Maybe I didn't say anything  
25 about timing in there.

09:30:32

1 MS MILLER: We had a separate agreement with the  
2 dominion's counsel that in the event that they did not prevail  
3 on their motion, that they would produce their documents I  
4 believe within three business days of the ruling.

09:30:33

5 THE COURT: Uh-huh.

6 MS MILLER: So we reached out to their counsel to  
7 inquire when they would be producing those documents, and at  
8 that time we were informed that they were not going to be  
9 producing and would be filing an appeal of Your Honor's ruling.

09:30:53

10 THE COURT: Okay. Well, that's on Judge Dow's plate,  
11 or will be on Judge Dow's plate; that's fine.

12 Okay. Let's see if we can march through some of this  
13 stuff. Let me first address the motion to reconsider a little  
14 bit to maybe provide some guidance, potentially, I don't know.

09:31:35

15 Brenda, I'm going to print my notes on this because I  
16 have my computer here, but I might as well just print it, and  
17 you can grab it for me. I think it's on my printer.

18 THE CLERK: Okay.

19 THE COURT: Hopefully it's on my printer.

09:31:46

20 THE CLERK: Okay.

21 (Brief pause).

22 THE COURT: So I misspoke in my order. Totally right,  
23 Reynolds. But I actually understood the facts as both sides  
24 agreed on. I have read Judge St. Eve's opinion, I have read  
25 the Seventh Circuit's opinion, I have read the complaints in

09:32:06

1 the case. So the language in there, as I re-read it, is really  
2 my misspeaking as to, you know, what happened in 2015, but I  
3 understood that Reynolds' position is that it had its system in  
4 place for some time. I guess what I was trying to talk about  
5 is, I know there are allegations that stuff happened in 2015  
6 and there were alleged agreements in 2015 that had an impact on  
7 this, and I think plaintiffs kind of laid that out in their  
8 response to the motion to reconsider.

9 So to me, waiver is irrelevant, because having read  
10 Reynolds' brief, I'm still where I was at the time I issued my  
11 order in November. I'm happy if you want to brief this on the  
12 19th and push it over the holidays, then I have to figure out  
13 when I can rule on it, but based on at least the two briefs  
14 I've had, which should be Reynolds' best shot and plaintiffs'  
15 best shot, and they do engage with each other on the points  
16 that are raised, I still think the issue really is -- and kind  
17 of as raised by Reynolds as its alternative point, is the scope  
18 of discovery that plaintiffs are entitled to see on this topic.

19 I mean, I think the issue continues to be relevant as  
20 to plaintiffs' desire. And I think under the discovery rules,  
21 they are right to discover the underpinnings for the security  
22 rationale for not allowing, you know, unlimited access, or  
23 whatever. However you want to characterize "access," I don't  
24 want to misspeak on that, too, but not allowing access to its  
25 system. Plaintiffs are entitled to some discovery on that

1 because it seems to me that whether Reynolds has been,  
2 quote-unquote, blocking access for a long time or not, still  
3 one of the underlying arguments for both defendants' positions  
4 in the case is that doing that is necessary and something that  
5 is, in part, driven by security needs.

09:34:34

6 And if that's still the argument, Ms. Gulley, which I  
7 think it is -- I mean, you can tell me I'm still wrong, and  
8 that's fine -- but I think there's some discovery that's  
9 relevant on that.

09:34:50

10 Scope, I think, is an issue. And the way these briefs  
11 came in on the motions to compel, there was no reply on any of  
12 them. So, you know, it was one party in the other one and  
13 there was a series of stuff and very long briefs, and to  
14 varying degrees I had a hard time figuring out what the parties  
15 were saying. They had been sitting for a while, so events may  
16 have overtaken some of the things. And, you know, there wasn't  
17 really -- I said in my order, there was no burden argument  
18 raised at that time, but, you know, I'm not going to say you  
19 waived that argument. You know, I just think that's something

09:35:09

20 that I can deal with, but I'm still where I was, the area of  
21 discovery is relevant, I just think the question of what  
22 documents are relevant to that as you guys have now briefed it  
23 in terms of time period. You know, defendant says, Reynolds  
24 says training documents are not relevant, plaintiff says they  
25 are, I'd want to know the reasons for that. And if I have to

09:35:30

09:35:51

1 decide the issue, I will. I mean, you know, as an aside, this  
2 case to me -- well, I shouldn't say this maybe now, okay.

3 Ms. Gulley, do you want a chance to send something in  
4 on the briefing schedule you agree to on the 19th given my --  
5 go ahead. It's not really Ms. Gulley, it's the other firm?

09:36:13

6 MR. ROSS: Well, Ms. Gulley is with me. I just am  
7 more responsible for this particular --

8 THE COURT: So you're Ross, right?

9 MR. ROSS: Brian Ross, yes, Your Honor.

09:36:28

10 THE COURT: All right. Sorry.

11 MR. ROSS: I guess I would say from Reynolds'  
12 perspective, this guidance is helpful. I think we should talk  
13 about it and we will let the Court know whether we even feel  
14 the need to file a reply next week, we'll also talk to opposing  
15 counsel.

09:36:41

16 But from our perspective, the motion was really  
17 intended to be a fairly simple one. From our standpoint, there  
18 appeared to be a mistake in the factual recitation in the  
19 order, which I think Your Honor has acknowledged to us that it  
20 appeared, as written, that it may be material to the Court's  
21 decision. I'm hearing from the Court now that perhaps that  
22 statement was not still critical to the ultimate resolution as  
23 to relevance.

09:36:57

24 THE COURT: Can I interrupt you for a record? I just  
25 want to really clarify something.

09:37:16

1 MR ROSS Yes, Your Honor.

2 THE COURT: Yes, I misspoke; okay. I did not mean to  
3 say that Reynolds began -- based on the stuff I had ran, I  
4 didn't necessarily mean to say that Reynolds began, you know,  
5 blocking access to its systems in 2015, because I recognize  
6 from the Seventh Circuit and here that Reynolds' position was  
7 that for a long time before the alleged conduct or agreement  
8 with CDK, Reynolds says it was, in fact, imposing security on  
9 its system to block other vendors, other people from accessing  
10 it; right? That's Reynolds' position?

11 MR ROSS That's correct, Your Honor.

12 THE COURT: Okay. And I understood that. What I  
13 meant to say in my opinion is kind of all the stuff in the  
14 complaints that I was saying broadly changed the way both sides  
15 did business in 2015, mostly with respect to its alleged, you  
16 know, combination conspiracy, whatever.

17 So I know that there are events that happened in 2015,  
18 and I misspoke in how they affected this particular issue. Now  
19 that I've read the briefs, I'm not actually sure how it affects  
20 this particular issue because plaintiffs seem to be saying that  
21 based on discovery, that there was a change in 2015 with  
22 respect to how Reynolds was necessarily implementing it's  
23 blocking. And I knew from the other opinions that I had read  
24 that -- and I don't know if any of what I'm saying is even  
25 necessary, but I want to make sure you know what's in my head,



1 okay, because if you're going to spend time writing a brief, I  
2 want you to know what is in here or is not in here.

3           You know, there were floating within this even when I  
4 issued my order was the notion that Reynolds had been allegedly  
5 selective in who it allowed into this system and who it didn't  
6 allow into the system during a long period of time, and whether  
7 or not it was blocking certain people and not others. I know  
8 whitelisting is related to this, to some extent. I think,  
9 unless you tell me it's not, in terms of who you would allow  
10 into the system or not.

11           So, you know, bottom line, I wasn't trying to say, and  
12 I misspoke to the extent that -- and I didn't mean to say that  
13 Reynolds began blocking in 2015; okay. But the second point to  
14 that is, it has no relevance at all to my decision as to why I  
15 think the plaintiffs would be entitled to understand better the  
16 rationale for Reynolds' security argument for whatever time  
17 period during this case that is relevant. I do think that  
18 information is relevant for the time period of this case. So  
19 that may have confused you even more, but I just felt like I  
20 needed to try and clarify and I may not have clarified.

21           MR ROSS: I appreciate it, Your Honor. And I guess  
22 I'll just say this, there's a lot there. We were a bit  
23 surprised at the substance of the plaintiffs' filing last  
24 night, because to us it did seem inconsistent with how we  
25 understood the case had been pled. We could spend time in a

1 brief refuting or doing what we believe would refute the  
2 factual recitation in the brief last night. I'm not sure  
3 that's going to be the most constructive use of the Court's  
4 time. The Court has said it appears to now be in dispute what  
5 occurred in 2015. Our understanding was that the pleadings  
6 always acknowledged that Reynolds blocked as far back at least  
7 2009, and I believe that the quote that we cited in our opening  
8 brief here was that Reynolds began blocking in earnest, this  
9 is, again, according to plaintiffs, in 2011.

10 And so if the issue is changes that were made in 2015;  
11 understood. That may result in further conversations amongst  
12 the parties about whether that's the timeframe that we need to  
13 be focusing on for purposes of this discovery, and if we're  
14 unable to reach accord on that, I think we now have a vehicle  
15 to come back to the Court in the form of our reply next week.

16 If there's anything in particular that the Court wants  
17 to hear about in such a reply or does not want to hear about in  
18 such a reply, I'm glad we're here. This is a good chance to  
19 get any sort of guidance on that. But, otherwise, I think  
20 we'll take all of this guidance to heart and see if we can  
21 either resolve the issue or at the very least streamline it.

22 THE COURT: Yeah. And I will say that nothing that  
23 you have said, Mr. Ross, or that I've read in your brief  
24 changes my view that the subject matter of security being a  
25 rationale among other rationales potentially for Reynolds

1 saying, "I do not want certain third-parties to be able to  
2 access my system," to me it's still a relevant issue in the  
3 case. I am not sure for what time period it is, and you're  
4 raising that. I'm not weighing in on that right now. You  
09:42:49 5 know, I mean, if your position is, we began blocking back in  
6 2009 or 2002, which is a little bit farther back than the  
7 timeframe in this case, but we began blocking in 2009 and one  
8 of the reasons we did it was because we wanted to protect our  
9 system from security, I think that's relevant, that could be.  
09:43:16 10 I mean, I'm going out more on a limb here, but I think that  
11 could be a relevant subject matter for plaintiffs' discovery.  
12 If plaintiffs are saying there were material changes in 2015  
13 that coincided with the alleged unlawful agreements with CDK  
14 during that period of time and that seems to be a profitable  
09:43:34 15 place to limit the scope of discovery, I can go with that, too.

16 The brief doesn't really talk about the scope of  
17 discovery, because the thrust -- well, your brief does, it's an  
18 alternative argument. If you believe the subject matter is  
19 relevant, then we have a question about scope. I didn't -- I  
09:43:55 20 don't think, from what I read this morning, because I didn't  
21 see it last night, plaintiffs really dealt with the scope  
22 issue. They dealt more with the relevance issue.

23 Right, Ms. Wedgworth?

24 MS WEDGORTH Yes, Your Honor. And if you want  
09:44:08 25 responses to some of the factual things, we're happy to give

1 it, but --

2 THE COURT: I don't think I do. I don't think I do.

3 Because my intention was to say, I understand I misspoke, but

4 to clarify what I understood then and now to say I think I'm

09:44:24

5 still focused on scope. I don't know that the parties have

6 fully addressed scope yet themselves. Maybe the clarification

7 of my precatory point could help. And if there's a

8 disagreement on scope, then I understand I'm going to have to

9 decide that, but I don't think I have the tools yet or the

09:44:45

10 information yet to decide that, particularly if defendants'

11 position is now there's a slightly different tilt to the

12 plaintiffs case. And you might say it's not a slightly

13 different tilt at all, this is where we've been going all

14 along, and, you know, I don't think I need to resolve that now

09:45:02

15 in this relatively short hearing.

16 So I think where I would end this is to say, you've

17 got a briefing schedule. Reynolds ought to think about what it

18 wants to do in the wake of what I've just said. Let Brenda

19 know, with a copy to the other side, whether you're going to

09:45:20

20 file a reply. I'll look at whatever you've filed, and then to

21 the extent I have to rule on a fully briefed motion, then I

22 will.

23 If instead you want to engage on the issue of scope

24 and then key something up to me on that issue, that's fine,

09:45:39

25 too. I think that's a perfect issue to be put in one document,

1 so that we don't need to have dueling briefs on that. In other  
2 words, the document would say, Motion to resolve discovery  
3 dispute about scope of, you know, discovery of security tools,  
4 processes and training, and it would say, Here's plaintiffs'  
5 position and here's why plaintiffs have this position, here's  
6 defendants' position and here's why defendants have that  
7 position. It could take a little bit longer to put that in one  
8 document, but to me at least that way the briefs don't go past  
9 each other as much as they do when sometimes they're  
10 responsive.

11 And I guess I will take this opportunity to say what I  
12 was going to say and the chips can fall where they may. I have  
13 lots of large cases and other MDL cases. And for what it's  
14 worth, the lawyers in this case and maybe the parties argue  
15 about things that you don't need to argue about necessarily,  
16 I'm not sure why that is. And I'm the decider, I guess, right;  
17 as maybe George Bush said. I don't know how much judges are  
18 quoting George Bush. So I understand that. But it just seems  
19 to me that, you know, this is an issue also that if there's  
20 reason on both sides and if there's, you know, good intent on  
21 both sides as to how you're going to get this, you could agree  
22 to something that would be produced here that wouldn't be  
23 overly burdensome on one side and would get the plaintiffs what  
24 they need.

25 I mean, you know, the other issue we're going to talk

1 about is, you know, defendants say they need more time for  
2 discovery, plaintiffs say, no, we're going to be ready to get  
3 this case done, and I know Authenticom wants to get the heck  
4 out of Dodge and get back to Wisconsin and try its case. So  
5 plaintiffs have to calibrate how much discovery is enough to  
6 get done what you want to do versus how much time we want to  
7 argue about it. So I'll just say that.

09:47:28

8 MR NEVELKA: Your Honor, could I just say something,  
9 very short?

09:47:45

10 THE COURT: Yes.

11 MR NEVELKA: One is, on the scope of this, CDK and  
12 plaintiffs have already come to an agreement, and that's what  
13 we think that Reynolds should've -- you know, should've agreed  
14 to that compromise. And our position all along is that  
15 Reynolds' position of, quote-unquote, "closed system" was only  
16 ever honored in its breach, and that now that we have seen  
17 discovery where they have 20,000 protected access points as of  
18 this agreement with CDK shows -- shows that pretty starkly.

09:47:58

19 THE COURT: Okay. I read all that; all right. I'll  
20 say to you now what I've said in my orders, which is the fact  
21 that CDK agreed to something has a vote but not a veto in this  
22 process.

09:48:21

23 MR NEVELKA: Right.

24 THE COURT: It's got different processes, it's got  
25 systems. Maybe it has a box of all of the documents you're

09:48:32

1 looking for or an electronic file room for that and they can  
2 give it to you more easily than the other side. So, you know,  
3 the fact that another company can get you something doesn't  
4 necessarily mean it's not burdensome on a different company  
5 with different processes and different systems, and, you know,  
6 I understand your argument on the relevance of it.

09:48:47

7 MR ROSS Your Honor, I'll say, your comments on  
8 hopefully reaching an agreement on scope are well taken, and we  
9 appreciate it --

09:48:58

10 THE COURT: Okay.

11 MR ROSS -- and I think we'll be in a better  
12 position to at least potentially do that in light of the  
13 guidance today.

09:49:06

14 THE COURT: Right. And I'm not saying, you know, if  
15 you can't reach agreement, don't file something. But I'm new  
16 to your case. I'm the newest person on the block in this room  
17 and even on the judiciary between Judge Peterson and Judge St.  
18 Eve and Judge Dow, but, you know, I have cases that are  
19 multidistrict cases, and I've been involved in them as a lawyer  
20 with many more lawyers and many more classes and many more  
21 potentials for dispute.

09:49:24

22 You know, when I came over here, I said, you know, my  
23 practice had very little of the type of discovery disputes I've  
24 seen in employment discrimination cases because the lawyers had  
25 understood the positives and the negatives of what was going to

09:49:39

1 happen and usually were able to reach agreement on some stuff  
2 without having to spend a lot of time briefing it. And, you  
3 know, I'm trying to get to your briefs as quickly as I can, but  
4 you see, it does slow things down. I mean, it just slows  
5 things down. And, you know, plaintiffs, you know, want to be  
6 on a fast locomotive, and the more issues that have to be  
7 decided and therefore slow things down, cut against one of your  
8 main purposes, which is getting out of Dodge and getting back  
9 and trying the Authenticom case and getting these other cases  
10 resolved. So there's a tension there; okay. And I'll do the  
11 best I can to address it.

12 But full stop. I'm talking too much about this.  
13 Think about it, see what you want to do. I'll respond to  
14 whatever you're doing. I'm getting current on this. I'm not  
15 current yet. I understand I've got some motions under  
16 advisement, but I'm attempting to, you know, get my land legs  
17 in your case.

18 Okay. The next issue that you guys teed up here was  
19 the plaintiffs' discovery served after the deadline, which is  
20 the way defendants characterize it, and related to that is the  
21 extension of the discovery schedule.

22 On the latter point, I'm not in a position now to  
23 extend any discovery schedule; okay. I know that I got  
24 plaintiffs very mad at me when I said, I don't think you can  
25 get this done by, what was it, February 15th?



1 MR NEVELKA: Correct.

2 THE COURT: Okay. I was right. I mean, I don't want  
3 to just roll it over on anybody, but it was not going to get  
4 done by February 15th; so that's fine. If I'm going to extend  
5 the discovery schedule again, though, based on what I saw in  
6 the briefs, I need to have a very good idea of what needs to be  
7 done and why it needs to be extended.

8 Plaintiffs seem to be telling me, look, we could be  
9 done. And defendants have said, we don't think we could be  
10 done, in part, because I know you're -- at least one of the  
11 playing pieces on that chess board that the defendants put in  
12 their motions to dismiss and things are still pending. You  
13 know, I know Judge Dow will get you a ruling on those motions  
14 to dismiss as soon as he can. You may have read that he's got  
15 this little consent decree issue that he's dealing with with  
16 the Illinois Attorney General and the City of Chicago and the  
17 Department of Justice, so that may have occupied some of his  
18 time, I don't know. It could've thrown him off a little bit.  
19 But he's a very diligent judge and he's going to get your  
20 ruling, I'm sure, as soon as he can.

21 But I'm not in a position on December 13th to say I'm  
22 going to move April 15th deadline. What I would suggest is  
23 this, that we can either decide now or maybe you could talk  
24 about this, I need more facts, you know. And I probably can't  
25 have those facts until sometime next year. You know, from the

09:52:54

09:53:14

09:53:33

09:53:48

09:54:04

1 defendants' point of view, what still needs to be done, why  
2 haven't we've been able to do it up until now, how much time do  
3 we think needs to be done. You know, maybe you'll hold your  
4 fire until you actually see a ruling on the motions to dismiss,  
5 and see, you know, where the chips fall on that. I do not have  
6 any inside information on that, I'm not saying, but I just  
7 think to the extent that's relevant to you, you may -- but I'm  
8 not -- it was unusual for me to do what I did months ago to say  
9 I don't think we're going to get done by a particular date, but  
10 in most cases, including large cases, I don't move those dates  
11 without more information about what's going on and why I need  
12 to do that. I mean, understood that people could come back to  
13 me and say, I want more depositions, too. You know, I'd have to look  
14 at that, too.

15 MR. NEMELKA: And, Your Honor, what we tried to show  
16 you is that the two-month extension has allowed us, as Your  
17 Honor was correct, to complete a lot of depositions. And what  
18 we tried to show you is that we are on track to complete those  
19 allotted depositions.

20 THE COURT: Yeah. I got that message. And, again, I  
21 don't mean to toot my own horn, I just -- there was a lot of  
22 push-back I think from you, Mr. Nemelka, and others saying, you  
23 know, "we go to get this done," and I don't know how you  
24 would've gotten that done without a whole lot of more brain  
25 damage than you've already had.

1 MS MILLER: Your Honor, if I may briefly address the  
2 Court on this.

3 THE COURT: Yes.

4 MS MILLER: The challenge the defendants are having  
5 is, we don't know what the actual deadlines for certain things  
6 are. We now -- we've already fully briefed the motion for  
7 protective order on a second set of requests that were served  
8 after May 25th. And according to plaintiffs, that was the  
9 deadline for document requests. So, by definition, those  
10 should not have been served. But now we have 65  
11 interrogatories that have been served that will have to be  
12 answered if, in fact, written discovery is allowed to continue,  
13 they'll have the answer sometime this month.

14 We have read Ms. Wedgworth's submission yesterday that  
15 she intends to serve some unknown number of interrogatories and  
16 RFA's and there may be more interrogatories coming from Mr.  
17 Nemelka's clients.

18 So we already have 65 in the hopper, plus we have  
19 these other document requests, plus, as we put in our paper,  
20 plaintiffs have asked for another document custodian that  
21 they're seeking for us to collect information and process.

22 We are still working, as Your Honor has acknowledged,  
23 on the implementation of Your Honor's rulings on the motions to  
24 compel. We alluded to, and the parties are working on, what  
25 they perceive as serious gaps in each other's document

1 productions that were served based on timely discovery  
2 requests. We've got outstanding responses to interrogatories  
3 that were served on May 25th.

4 I appreciate that Mr. Nemelka and Ms. Wedgworth  
09:55:35 5 represent that they think they can get the depositions done in  
6 the time allotted, but everybody's math pretty much matches up,  
7 and we will have completed 30 depositions by the end of  
8 January, which is 3.5 months into the oral discovery period,  
9 but now we're supposed to complete twice that number, 60 in  
09:55:56 10 2.5 months after January, which, quite frankly, the math  
11 doesn't really work.

12 Mr. Nemelka's suggestion was that we get less  
13 depositions. Obviously, we oppose that request for obvious  
14 reasons, but then we also have this question of third-party  
09:56:13 15 discovery where we have a number of third-parties that are  
16 going to be appealing your order, filing motions to quash,  
17 won't show up for a deposition. We have one third-party of 30  
18 that is currently agreed to a date, but even that party has  
19 said that they plan to instruct their witness not to answer  
09:56:28 20 anything that they deem confidential. So I suspect that will  
21 result in motion practice in front of Your Honor.

22 There are some 60-plus third-party subpoenas that are  
23 pending. As Ms. Wedgworth noted in her filing yesterday, they  
24 have outstanding subpoenas to Mr. Nemelka's clients.

09:56:45 25 I could keep going, Your Honor, of the amount of stuff

1 that is purportedly all going to get done by April 15th, and I  
2 don't think even if we were not to take time off for Christmas  
3 and New Years, that is realistic.

4 MS GULLEY: Well, as Mr. Nemelka points out --

09:57:01

5 THE COURT: That was Ms. Miller speaking. This is  
6 Ms. Gulley.

7 MS GULLEY: Thank you, Your Honor, Yes. As Mr.

09:57:20

8 Nemelka points out, plaintiffs believe they are on track to  
9 complete depositions of the two-plus CVR defendants in this  
10 case. But remember that defendants produced a huge chunk of  
11 their documents in May, all of their FTC productions in the  
12 joint conduct investigations. We did not receive documents  
13 from the plaintiffs, substantial portions of them, until  
14 October, and are still receiving many.

09:57:37

15 In terms of the class of dealers, it's so few that  
16 we've been unable to even identify a witness with enough  
17 documents that we could figure out which of the many people at  
18 the dealerships should even be deposed.

09:57:54

19 And so while it may be true that plaintiffs are way  
20 ahead of the game because they've been way ahead of our game on  
21 getting documents, we're just not able to keep up with  
22 identifying which deponents we need, because, for example, when  
23 we asked for organizational charts, certain of Mr. Nemelka's  
24 clients refused. And so without them -- this is early on in  
25 the schedule prior to the due date, and so we were unable to go

09:58:13

1 through it and forgot who to depose.

2 The point is, these are not ripe issues before you,  
3 but I agree with you, of course, you need in more detail of who  
4 do you need, when, and why before we move the discovery  
09:58:30 5 schedule. It's just that the way that this train, this  
6 locomotive is going is making it difficult for defendants,  
7 that's true of the discovery and we need to come back and talk  
8 to you about that.

9 Meanwhile, as Ms. Wedgworth pointed out in her brief  
09:58:44 10 last night -- and this is another issue, is that we're kind of  
11 facing a three-ring circus here with two different, you know,  
12 sets of plaintiffs with different motives and goals where  
13 they're subpoenaing each other, but as Ms. Wedgworth pointed  
14 out in her brief last night, the affirmative experts are now  
09:59:02 15 due two months before the end of discovery, including things  
16 centrally at the heart of Ms. Wedgworth's subpoena to Mr.  
17 Nemelka's clients, you know, our subpoenas to Mr. Nemelka's  
18 clients, and CDK's discovery requests to them.

19 And so it's just difficult to envision a situation in  
09:59:22 20 which we'd be able to put on damages experts in March and  
21 April, that's just on the affirmative claims. The  
22 counterclaims, only one set have even been filed. Ms. Miller  
23 is awaiting rulings on motions to dismiss after which she will  
24 file counterclaims, those aren't even on file yet, and the idea  
09:59:45 25 that she would have an expert report due on that, you know, in

1 the first quarter of next year.

2 We're pointing out to you that these are issues that  
3 are coming fast and with the holidays coming up, you know, are  
4 going to have to be addressed. Getting guidance from you as we  
5 go into this period of negotiation would be very useful.

10:00:00

6 THE COURT: Well; okay. There's a lot of noise there.  
7 I mean, there are a lot -- there's a lot of stuff there that I  
8 cannot deal with right now. I mean, plaintiffs filed something  
9 at 8:05 p.m last night. I did not see it until 7:00 a.m this  
10 morning. I read it. How fully I've digested that and what  
11 defendants filed yesterday, I'm still at a fairly high-level  
12 and the new kid on the block.

10:00:24

13 I mean, I could say certain things. I'm not going to  
14 have expert reports due and expert disclosures due before fact  
15 discovery closes. But instead of -- I mean -- and I can't  
16 believe the plaintiffs' want that, too, but this is an example,  
17 why don't you just talk and submit a proposed stipulation that  
18 says, given the Court's extension of the fact discovery  
19 deadline, and you didn't do the other deadlines, we're going to  
20 need more time with that, and I'd sign that in a second, but if  
21 you can't agree to that, then give me what your respective  
22 proposals are and I'll flip a coin.

10:00:41

10:01:06

23 And I also understand that because motions to dismiss  
24 have been filed by one or both defendants on different things,  
25 they haven't even answered some of the claims yet because they

10:01:26

1 filed motions to dismiss them. So, I mean, I get that, that's  
2 not --

3 Yeah, Mr. Nemelka.

10:01:37

4 MR NEMELKA: Your Honor, as Ms. Gulley and Ms. Miller  
5 will tell you, we've asked them multiple times to have that  
6 very discussion that Your Honor suggested that we have, which  
7 is, given the two-month extension of the fact discovery  
8 deadline to see what other deadlines need to move because of  
9 that, which we agree they need to move because of that. They  
10 have refused to meet and confer with us. And so we agree with  
11 Your Honor that we should confer on that, and at least if we  
12 can't agree, submit competing proposals.

10:01:52

13 MS MILLER: Your Honor --

14 THE COURT: Did you really refused to --

10:02:03

15 MS MILLER: No, Your Honor, that's a gross  
16 overstatement of what we've done. In fact, Your Honor -- if  
17 you go back to the October 9th hearing -- suggested that we  
18 have a meet-and-confer after the decisions on the motions to  
19 dismiss came out so we would know what claims are in, what  
20 claims are out. I don't even know if I have a counterclaim.  
21 Mr. Nemelka has moved to dismiss the whole thing.

10:02:17

22 So I don't know if I need to engage an expert with  
23 respect to my counterclaim because I don't even know if I have  
24 one. If he prevails, I won't. I still haven't filed  
25 counterclaims in the other cases in which -- that are still

10:02:29



1 pending before Judge Dow.

2 So when Mr. Nemelka and Ms. Wedgworth ask that we have  
3 a meet-and-confer to discuss a global schedule, we said we  
4 agree with Your Honor that it makes sense to have that  
5 discussion after we have rulings on the motions to dismiss.

10:02:43

6 In the interim, we have been told that although, at  
7 least with respect to Mr. Nemelka's clients, he agrees that  
8 some of the dates should be moved, it's the expert dates, but  
9 his trial date under no circumstances shall move, the summary  
10 judgment date shall in no circumstances -- or should not move  
11 by much, i.e., they should not impact the trial date.

10:02:59

12 So I appreciate and we are happy to sit down and see  
13 if there can be movement made, but with the fundamental premise  
14 of the trial date will not move and everything else that has to  
15 happen between now and then has to be crunched into that time  
16 period, there is -- we do not -- we have a fundamental  
17 disagreement.

10:03:16

18 We still don't have, as we noted in our papers, we  
19 still don't have updated financial information from Mr.  
20 Nemelka's client that supposedly substantiates their continued  
21 need for a super-fast trial date.

10:03:32

22 So we can have a discussion, I'm not sure it's not, in  
23 large part, an exercise in futility beyond moving the start of  
24 expert discovery after the April 15th date, but if Your Honor  
25 would like us to sit down, we can have those conversations and

10:03:51

1 we can submit opposing schedules and briefs of whatever length  
2 Your Honor would like to substantiate why we think our  
3 schedules make sense.

10:04:04

4 THE COURT: Point of clarification. I'm looking at  
5 Judge St. Eve's May 7th, 2018, case management order, I don't  
6 see any trial date set.

7 MR. NEVELKA: There's no trial date.

8 THE COURT: Okay. And you're intending to go back to  
9 Wisconsin to try Authenticom, right?

10:04:17

10 MR. NEVELKA: At least for Authenticom. The other  
11 cases we may stay here.

12 MS. WEDGORTH: And the dealership case would stay  
13 here, Your Honor.

10:04:24

14 MS. MILLER: And I apologize, Your Honor. It's not  
15 the trial date itself, but the timing of when that trial would  
16 occur, i.e., shortly after a ruling on the motions for summary  
17 judgment. They are looking to have a trial as early as  
18 possible, and at this rate either at the end of next year or  
19 early the following.

10:04:37

20 THE COURT: Okay. Well, I'm going to make this real  
21 easy. I'm going to strike the deadline -- the expert report  
22 and discovery schedule set in the May 7th case management  
23 order, because that schedule no longer makes sense given the  
24 April 15th close of fact discovery; okay. So those dates are  
25 gone.

10:05:06

1           There are other dates after that, deadline for Daubert  
2 and dispositive motions. I don't know whether those are going  
3 anywhere or not, but I haven't looked at that carefully.

4           Before I strike all those dates, I'd like to -- I  
5 mean, I don't have to strike them right now, it's July. You're  
6 not writing your summary judgment briefs now. My best bet is,  
7 those dates are moving. Those dates are going to move. I know  
8 that, you know that. I was at the October 9th -- I was at the  
9 October 9th hearing, too, and I know Judge Dow was very  
10 optimistic in his getting a ruling on the other motions to  
11 dismiss. He gave you a pretty quick ruling on one of the  
12 motions at that point.

13           MR NEVELKA: Correct.

14           THE COURT: And he was optimistic on the other ones.  
15 And that was, in part, the basis of my saying once we get a  
16 ruling on that, then we should have this kind of status hearing  
17 where we do this. And because we didn't have that, you know,  
18 as Ms. Miller says, we're waiting for another shoe to drop here  
19 that is going to affect a lot of the scheduling here.

20           I'm going to order you to talk. The issue is the  
21 completion of fact discovery, but right now we still have an  
22 April 15th date. Part of it is just throwing darts on the  
23 calendar until you have a ruling on the motions to dismiss,  
24 that's the problem.

25           (Brief pause).

1 THE COURT: But to the extent that your expert dates  
2 were keyed off -- part of my problem in extending discovery,  
3 frankly, is, I looked on the -- or even dealing with whether  
4 the discovery plaintiffs have served is proper is, I looked to  
5 see if there's a transcript of some hearing in front of Judge  
6 St. Eve where everybody expressed their views on this, I  
7 couldn't find one.

8 MS WEDGORTH There isn't one, Your Honor. This was  
9 done before the structure was in place, at least for the  
10 dealerships.

11 THE COURT: Were there briefs on this?

12 MS WEDGORTH There were, yes.

13 MS MILLER: There were briefs on the original  
14 schedule. The parties submitted their respective briefs. At  
15 one point, there was agreement among some parties as to the  
16 schedule. There was, obviously, not universal agreements  
17 amongst the parties, and so the parties briefed the issue of  
18 what is the schedule. Judge St. Eve altered one of the  
19 schedules that had been submitted and entered her schedule. We  
20 all can debate what she meant. We, obviously, both think it's  
21 very clear and we come out the other way on it. We, obviously,  
22 disagree with plaintiffs' attempt to try to provide context  
23 beyond the plain reading of the order, but we're happy to have  
24 that debate, but the fundamental question comes down, and I  
25 appreciate the challenges Your Honor has with respect to

1 deciding where we are in discovery, but, obviously, with  
2 respect to the -- we don't have an obligation to respond to the  
3 second request for production because that's under advisement  
4 with Your Honor in our motion for a protective order.

10:09:16 5 But as I sit here, we currently would have  
6 interrogatory responses to some 65 interrogatories, if my math  
7 is right, I think sometime next week or right after Christmas,  
8 which with all due candor, I have not begun to prepare because  
9 we think they're facially invalid. And so we haven't wasted  
10:09:36 10 our client's resources to undertake that effort because we  
11 don't think they're, quite frankly, proper. And, again, I  
12 don't know whether or not I'm going to be getting a set of  
13 another, you know, 65 interrogatories from Ms. Wedgworth's  
14 clients that I'm then going to have to answer.

10:09:52 15 MS WEDGORTH Your Honor, if I can response briefly.  
16 The May 25 deadline that defendants say incorporates requests  
17 for admissions, as well as interrogatories and other discovery  
18 requests, cannot in any form or fashion include requests for  
19 interrogatories.

10:10:05 20 I was appointed lead counsel on April 16th, the order  
21 came down for a May 25th deadline. Requests for admissions in  
22 other cases I've used to narrow the issues for trial, we hadn't  
23 taken one discovery -- one deposition by May 25th, document  
24 production wasn't in full swing until after that. I wasn't  
10:10:26 25 even up and running until the month of May. So to think that

1 interrogatories and requests for admissions, at least on behalf  
2 of dealerships if not all plaintiffs, could not have gone  
3 forward in completeness by May 25th.

4 And as the rules say, one of the purposes of requests  
10:10:43 5 for admission narrows issues many times for trial. That's the  
6 reason, again interrogatories as I put in my papers, I only  
7 have so many to do. I'm waiting and using those at the right  
8 time in order to efficiently use them on behalf of the class in  
9 this MDL to hopefully get the information at the right time. I  
10:11:04 10 don't want to use them too early and then inefficiently have to  
11 come back and do it again. So that May 25 deadline alone is  
12 not in any way appropriate to be for any written discovery in  
13 this matter.

14 THE COURT: You know what? 1, I'm striking just the  
10:11:51 15 expert discovery schedule here. 2, I don't know what my  
16 authority is right now to set a schedule in front of Judge Dow  
17 for Daubert and summary judgement motions; okay. My best guess  
18 is, those dates are going away, too, but I don't have to deal  
19 with them right now. I want to at least deal with the  
10:12:16 20 asymmetry in the discovery schedule, because discovery is on my  
21 plate. There's no way I'm having expert reports done before  
22 fact discovery is done.

23 The schedule that was entered by Judge St. Eve on  
24 May 7th was an expedited schedule, in part, because she was  
10:12:38 25 trying to comply with the Seventh Circuit's request that this

1 be done on an expedited basis, but the table -- the shape of  
2 the table has changed since May 7th in a lot of ways. My  
3 feeling is, I should just keep the same schedule. So there was  
4 opening merits expert reports were 30 days after the fact  
5 discovery closed, I would just set that for May 15th, and then  
6 I would do the next one 30 days after that. I would just push  
7 these dates out with the same distance between these dates as  
8 they were in the original case management order. I'm going to  
9 say in my order right now, "This is subject to change, as  
10 necessary, after rulings on the motions to dismiss are entered  
11 and the parties have a better chance to assess the shape of the  
12 case at that time."

13 And I will say in my order, so nobody has to read  
14 between any lines, that if the Court has to change these dates  
15 for expert discovery at a later date, it will do so; okay. But  
16 at least now I would do that. Objections to that?

17 MS MILLER: No, Your Honor -- oh, I'm sorry.

18 MS WEDGORTH None here, Your Honor.

19 MR NEVELKA That makes sense, Your Honor.

20 THE COURT: And I will say in this order that in the  
21 Court's view -- well, I don't want to step on anybody's toes  
22 here with respect to trial dates and summary judgment, but it's  
23 obvious to me, unless everybody is going to agree to brief  
24 dispositive motions and do expert discovery at the same time  
25 and there might be some overlap there, sometimes there is in

1 antitrust cases, that that's not going to be efficient.

2 MS MILLER: Your Honor, if I may? We certainly don't  
3 have an objection and appreciate Your Honor moving the expert  
4 dates and we appreciate that you're willing to move them again.  
10:14:52 5 Our concern, obviously, as you just said a moment ago, that the  
6 landscape has changed. And so with due respect, now that we  
7 have two class actions, as well as a number of individual  
8 actions, defendants are going to need more than 30 days to  
9 respond to the multiple expert reports that are going to be  
10:15:10 10 coming in on that opening date.

11 We're happy to have Your Honor keep the intervals for  
12 now, but would like to give Your Honor a heads-up that  
13 defendants are going to be seeking an extension of those  
14 intervals for the simple reason that we are going to have a lot  
10:15:26 15 more to respond to than we thought we were going to back in May  
16 when we first started this.

17 THE COURT: Okay. And I'll look at those if you can't  
18 agree to those.

19 MS MILLER: Okay.

10:15:43 20 THE COURT: Can I just circle back to something and  
21 then move forward on this discovery stuff? There's a motion  
22 for protective order -- plaintiff served some additional  
23 discovery, defendants filed a motion for a protective order,  
24 that was fully briefed on Tuesday.

10:15:59 25 MS. MILLER: Yes, Your Honor.



1 THE COURT: And that addresses some of the discovery  
2 that is referenced in the stuff you filed in advance of today's  
3 hearing.

4 MS MILLER: Correct, Your Honor. That addresses the  
5 October 12th second request for production that was served  
6 on the substantial completion deadline by Mr. Nemelka's  
7 clients. In approximately a month and a half later, the  
8 individual plaintiffs represented by Kellogg Hansen served  
9 additional now 65 interrogatories on the various defendants  
10 between, I think, November 21st and November 27th, and in that  
11 time period we also received additional requests for new  
12 document custodian.

13 THE COURT: Okay. You were groaning, Mr. Nemelka? It  
14 sounds like a free-for-all here, but go ahead.

15 MR NEMELKA: I would just say, the document request  
16 that have been fully briefed it just concerns two topics that  
17 as Your Honor will see in the briefing arose after the May 25th  
18 deadline. And in the interrogatories, you know, me and my  
19 clients, like Ms. Wedgworth's, have not served any  
20 interrogatories, and so, you know, felt like it was the  
21 appropriate time to do so.

22 THE COURT: Yeah, I hear you. Let me tell you a  
23 couple of things here. I don't know how I'm going to deal with  
24 this particular issue right now. You know, it was teed up  
25 beginning on the 12th and then yesterday. I view -- I mean,

1 request for admissions, request to admit are hybrids; all  
2 right. I view them as useful at different parts of the case,  
3 and, you know, there's a difference of opinion as to whether  
4 these pure discovery, not pure discovery. I can't -- I don't  
10:17:55 5 understand enough right this second what the case looked like  
6 when Judge St. Eve entered her order; okay. I will tell you  
7 reading English and just the cultural in this district, unless  
8 the parties submit something that says interrogatories are to  
9 be treated different than other discovery, written discovery,  
10:18:15 10 most of the orders that we enter in this district where it says  
11 discovery is to be served, discovery requests are to be served,  
12 that means interrogatories and document requests for sure; all  
13 right. I don't know what you guys submitted to Judge St. Eve  
14 when she entered the schedule, and I'll have to look at it, and  
10:18:37 15 I don't know what the posture of the case was at that time.

16 MS WEDGORTH, you say you were just appointed class  
17 counsel on, what, April 25th?

18 MS WEDGORTH April 16th, Your Honor.

19 THE COURT: Okay.

10:18:44 20 MS WEDGORTH So I didn't even have any document  
21 production until after that. And once you get a document  
22 production, it doesn't automatically show up on your system.  
23 You have to get your IT department, blah-blah-blah.

24 THE COURT: Yeah, but I have to see what you guys  
10:18:57 25 proposed; okay. I mean, that doesn't matter to me as much as

1 what was being discussed at the time. A case schedule means,  
2 this is the schedule for everybody to abide by. And I  
3 understand the defendants saying, Well, we're months into  
4 discovery and now I'm getting interrogatories, what do you want  
5 me to do, do that and depositions. I understand that point;  
6 okay. Parties could allow for that. I've got cases where I've  
7 got, after the first round of document production, the parties  
8 -- and the Court enters an order -- but the parties propose  
9 that there's another round of interrogatories. And I also have  
10 entered case management orders that say requests for admission  
11 are due by this date and therefore they're not included in the  
12 written discovery requests.

13 So I don't know what you all suggested to Judge St.  
14 Eve. If everybody was gung-ho on getting everything done as  
15 soon as they can from the plaintiffs' point of view and you  
16 submitted a schedule that said written discovery, essentially,  
17 you know, additional non-duplicative coordinated discovery  
18 requests, search terms and custodians are supposed to be due by  
19 May 25th, that's the date that that stuff has to happen; all  
20 right. Now I just have to tell you, the way I read the English  
21 language there; all right.

22 You're right, plaintiffs are right, it doesn't say  
23 interrogatories, requests for admission and requests for  
24 production. I don't know what your briefs said because I  
25 haven't read them and I'm going to have to now go back to the

1 docket and see what they have to say. But if nobody made any  
2 distinctions about that, if people were arguing to the judge  
3 written discovery should be served by "x" date and if the  
4 plaintiffs were saying we got to get this show moving and  
5 written discovery is going to have to be served by "x" date,  
6 then it doesn't matter to me that you were appointed class  
7 counsel on April, what did you say, 16th?

8 MS WEDGORTH 16th.

9 THE COURT: 16th. Because if you were appointed class  
10 counsel for a case that was a locomotive going straight on a  
11 track, then between the 16th and the 25th you had to serve your  
12 written discovery requests; okay.

13 I mean, again, I'm looking at the plaintiffs here and  
14 I don't know where you want to go with this; okay. You want  
15 expedited discovery, get it done quickly, when defendants said  
16 that they might want to move the expert discovery schedule  
17 because they don't have time in that 30-day period to serve the  
18 six expert reports that they want. You guys, I saw on your  
19 faces, your body language was: Oh, my goodness, that's another  
20 extension.

21 On the other hand, if we're going to serve 65 document  
22 requests and interrogatories or requests for admission, that's  
23 going to slow down your train. So I don't -- and, again, Judge  
24 Dow has said this from the bench and I see it, too, and I see  
25 it in this briefing, where's the fire? Okay. Where's the

1 fire? If there's a fire, you have to have pictures of the fire  
2 to show or at least get as close enough to feel the heat.

3 So I can't deal with this thing right now, all right.  
4 Now, what are they supposed to do with the interrogatories that  
5 have been served and the requests for production that were  
6 attached to their filing? I haven't gone through them in the  
7 day that I had to do it.

8 (Brief pause).

9 THE COURT: I'm just looking at some of them now.

10 (Brief pause).

11 THE COURT: I'm going to have to look at this, because  
12 I don't understand in what world, even assuming the plaintiffs'  
13 position 6 months after the discovery schedule is entered in a  
14 case management order, it's fine to serve interrogatories in  
15 the middle of depositions. I got to understand why that world  
16 is a world that you think Judge St. Eve allowed in her case  
17 management order, I don't get that. I mean, I'm looking at  
18 some of these interrogatories. I don't know the case as well  
19 as you do. Some of them are clearly following up on a  
20 deposition, document production, whatever. It would've been  
21 totally fine for you to suggest a schedule to Judge St. Eve  
22 that says after the first substantial completion of documents,  
23 we want another ability to serve another round of document  
24 requests and an opportunity to serve interrogatories to narrow  
25 issues and maybe even a request for admission, but if you

10:25:04

1 would've done that, the date to complete depositions would  
2 change; okay? Because you need that stuff before you're going  
3 through the dep process. And I just don't understand what  
4 world exists where 6 months after an order that says discovery  
5 is supposed to be served by then, we can get all this other  
6 discovery in there, I don't get that, I don't understand that  
7 world.

10:25:17

8 MR NEVELKA: We never understood that deadline to  
9 apply to interrogatories.

10:25:31

10 THE COURT: What did you understand the deadline to  
11 do? 30 days before the close of fact discovery you can give  
12 them 25 interrogatories? I mean, under this schedule, the  
13 deadline to complete fact discovery was February 15th. So  
14 under this schedule, you're telling me that you thought that by  
15 January 15th you could serve your interrogatories and that  
16 would just be hunky Dory?

10:25:47

17 MR NEVELKA: Not necessarily would be hunky Dory. We  
18 thought that we needed to serve interrogatories in time to try  
19 to get responses to them. And we served them in November,  
20 5 months before the end of discovery, and thought that 5 months  
21 for the end of discovery on certain targeted interrogatories  
22 was appropriate.

10:26:00

23 THE COURT: I'm not sure that's true.

24 MS WEDGORTH Your Honor, on requests for admissions  
25 -- and I hate to date myself in the Soybean Futures case a

1 thousand years ago with Magistrate Pallmeyer who is now judge  
2 -- in that case, we did requests for admissions toward the end  
3 of the depositions in discovery period, which were very  
4 effective, and in other futures cases have that that, too, with  
5 regards to counts, but we couldn't do summary positions of  
6 particular traders or companies in the Futures market until we  
7 had the documents and we took some depositions about those  
8 documents.

9 And once we got an understanding of how the accounts  
10 worked and how to calculate positions, we then issued a series  
11 of requests for admissions and got responses for that, which  
12 totally narrowed the issues for trial, that's the type of thing  
13 I'm approaching it for requests for admissions here.

14 And I'm not saying we've got a bunch of accounts  
15 running around with a bunch of traders, I understand that, but  
16 in similar vein, we would have that type of requests for  
17 admissions here, that's the reason, that would narrow it for  
18 trial.

19 THE COURT: Yeah. And if you want to negotiate a new  
20 case management order that incorporates different deadlines and  
21 accommodates the case as it stands now as opposed to where it  
22 stood on May 7th, nothing is preventing you from doing that,  
23 okay, except yourselves; all right. Because what I understood  
24 you to be saying is, in Judge Pallmeyer's situation, that was  
25 actually in her case management order; right?

1 MS WEDGORTH I actually don't know. It was so long  
2 ago.

3 THE COURT: Well, first, in terms of responding, I'm  
4 not staying any discovery right now, okay. You got served with  
5 a bunch of stuff; right? You might file a response that says,  
6 For the reasons set forth in this thing, we don't think we  
7 ought to respond to it, all right, that's our objection. I'm  
8 not -- I am not right now, if this is what plaintiffs want me  
9 to do, to order the defendants to provide substantive responses  
10 to everything you just served, I have to go back and see how  
11 the heck this happened; all right. And I'm not going to  
12 interfere with the normal case, but I would fully expect the  
13 defendants to say to you in response to everything you're  
14 serving, We don't think this is right and we're objecting to  
15 it, until we get a court order, we're not responding to your  
16 discovery, okay; full stop.

17 2, what did the case look like on May 7th? So  
18 Authenticom was a plaintiff --

19 MR NEVELKA Authenticom was a plaintiff.

20 THE COURT: -- the dealer class had filed, and on  
21 April 16th you were appointed class counsel.

22 MS WEDGORTH Correct, Your Honor.

23 THE COURT: Vendor class.

24 MR NEVELKA AutoLoop had also filed, yes, and Cox  
25 Automotive had also filed. And MSC was actually the first



1 case.

10:28:55

2 MS MILLER: And AutoLoop had only filed as an  
3 individual at that point, they had not yet filed -- their  
4 amended complaint purported to have changed their status from  
5 an individual plaintiff to a class action. So that had not  
6 happened as of May 25th.

7 THE COURT: But there had already been a class action  
8 filed --

9 MS MILLER: Absolutely, Your Honor.

10:29:05

10 THE COURT: -- where AutoLoop was a part of that  
11 class.

12 MS MILLER: They were a standalone. They were like  
13 Cox and MSC and Authenticom, they were suing individually.

14 THE COURT: Okay.

10:29:14

15 MR NEVELKA: The only change that happened after May  
16 25th is that the vendor -- that the AutoLoop complaint became a  
17 vendor class complaint, and all of the other cases had been  
18 filed.

10:29:24

19 MS MILLER: Your Honor, we're happy to have you read  
20 the briefing on the schedules that were submitted. You will  
21 see that Judge St. Eve specifically changed the order to  
22 require strict compliance with local Rule 37.2 as it relates to  
23 the service of discovery requests and motions to compel and  
24 with respect to non-governmental privilege logs. And as Your  
25 Honor noted, there's no separate provision for interrogatories

10:29:42

1 and anything else. So I think the judge was very aware of what  
2 she was doing.

3 THE COURT: I mean, you have to be aware of the  
4 culture in the individual district that you're in, I'm just  
5 telling you that. And, you know, I routinely enter orders that  
6 say I think something like, written discovery requests -- or  
7 written discovery is to be served by "x" date or written  
8 discovery requests are to be served by "x" date, and the  
9 parties in these cases understand that's interrogatories and  
10 requests for production.

11 But I have to go back and see where you are, because  
12 I'm hearing there's cognitive dissidence here, and maybe it was  
13 just everybody was moving very quickly at that point in time,  
14 but to me if the intention was to allow interrogatories to be  
15 served outside the schedule that was put in the case management  
16 order on May 7th, it should've been set someplace. I mean, she  
17 says, "Deadline to file motions to compel, if any, after strict  
18 compliance with local Rule 37.2." She doesn't say -- well,  
19 okay, I have to go look at this stuff. Hold on for one second.

20 (Brief pause).

21 THE COURT: To me, you're in the same position as you  
22 were when I was talking with you in October. There's a game of  
23 chicken going on here. There's a real game of chicken going on  
24 here. And I don't know whether I want to -- you know, the  
25 question is, what does it mean to take the bull by the horns

1 there. There are judges that would take over your case right  
2 now and tell you exactly what you're going to do and when  
3 you're going to do it. When I was a lawyer, I hated that. I  
4 always, as a lawyer, wanted to be able to control my case as  
5 much as possible and be able to have the judge cooperate to  
6 that extent with me, and that's a little bit of what I mean by  
7 what's going on here.

8 Let me review my notes, because we're going to have to  
9 end soon.

10 (Brief pause).

11 THE COURT: You know, I'm just going through the list  
12 of issues here. I think the better procedural vehicle  
13 defendants, I'm sorry to make more work for you, but if you've  
14 got discovery responses coming due on stuff that you have not  
15 yet moved for a protective order, I need a short motion for a  
16 protective order on that; okay? Because I don't like just not  
17 answering some stuff. I think you got --

18 MS MILLER: We're happy to file one, Your Honor.  
19 When would you like that?

20 THE COURT: You got to file something short. It  
21 doesn't have to be crazy. I'll decide what I want to do in  
22 terms of briefing on that.

23 MS MILLER: When would you like that, Your Honor?

24 THE COURT: As soon as you can do it.

25 MS MILLER: Not a problem.

1 THE COURT: I mean, you should do it before your  
2 discovery responses are due.

3 MS MILLER: Not a problem, Your Honor.

10:33:34

4 THE COURT: You'll deal with this issue about the  
5 discovery of the data security stuff. Extension of discovery  
6 schedule, aside from the experts is premature right now. It's  
7 going to have to happen sometime in the new year, at least to  
8 address it once I know what -- once everybody knows what deps  
9 are in the can.

10:33:58

10 So on the clawback stuff, real briefly. I read this  
11 stuff; okay. I need a hearing on it. I need to have an  
12 in-person hearing. I'm looking at the documents, I see what  
13 you've got in the privilege log, but I don't have great  
14 explanations as to why these things are being withheld. Some  
15 are clearly privileged, some I don't have a clue as to why it's  
16 privileged. Some of them are, as I see it, transmission  
17 e-mails. What I don't know is, on some of these, whether the  
18 attachment is being withheld and whether the attachment itself  
19 is a privileged document or not. And so I've been struggling a  
20 little bit with how I want to address this with you and then  
21 when I could have a hearing and I've just been slammed, but I'm  
22 going to have to set an in-court hearing. What I normally with  
23 that is, I would have Brenda send out several dates to counsel  
24 and then we'd have to see when I can get you in.

10:34:42

10:35:08

25 (Brief pause).

1 THE COURT: Plaintiffs' motion to compel under  
2 advisement on the data security, data integrity and system  
3 performance. Is the only thing waiting on that a hearing or  
4 are you talking about that amongst yourselves?

10:35:32

5 MR. PROVANCE: Yes, Your Honor. There have been two  
6 meet-and-confers. In your ruling, you overruled the  
7 plaintiffs' objections, I guess categorical, for producing any  
8 discovery on these topics, which you ordered the parties to  
9 meet and confer about scope, particularly as to the search  
10 terms that the plaintiffs were refusing to run.

10:35:50

11 We have had two meet-and-confers about those issues.  
12 What's happened is that issues such as syntax errors in the  
13 search terms, which we wanted to address in June, July, August  
14 before the motions deadline, they never got addressed because  
15 the plaintiffs were categorically refusing to talk about them.  
16 So we've had to talk about, you know, what are the syntax  
17 errors in some of the search terms. We've been asked to  
18 correct them rather than the plaintiffs. We believe we've done  
19 that now. We're still trying to figure out what the burden is  
20 on the additional search terms that we proposed in May. We  
21 don't have an answer to that at this time.

10:36:11

10:36:27

22 We are also trying to understand what documents the  
23 plaintiffs have already reviewed. If they reviewed those  
24 documents to identify things that were responsive to the  
25 document requests that they objected to or if they're going to

10:36:47

1 have to look at those documents again now that their objections  
2 to those particular ones have been overruled. Those issues are  
3 still outstanding, we don't have resolution to them, but the  
4 parties have met and conferred and I believe are planning to do  
5 so again.

10:37:05

6 THE COURT: Well, I guess what I would like to say is,  
7 I don't think I want to engage with this until I know what I  
8 have to decide. So as soon as you feel like you've run the  
9 meet-and-confer process to ground on that and you have a  
10 schedule for presenting it to me either in a joint filing or in  
11 dueling filings, let Brenda know and I'll set that schedule,  
12 but I don't want to set a date for me to engage with this if I  
13 don't know what I'm supposed to engage with in terms of burden  
14 and structure. So I don't feel a need to set something on that  
15 right now.

10:37:17

10:37:40

16 MS MILLER: And we're perfectly happy to do that, and  
17 we'll try to bring it to Your Honor as expeditiously as  
18 possible, because, obviously, we're trying to get these  
19 documents because we need them for depositions.

10:37:51

20 THE COURT: Yeah. Give me one second here to gather  
21 my thoughts. I don't know that I can give you any dates on  
22 this stuff, but I want to make sure I'm looking at everything  
23 that I need to be looking at.

24 I have people set at 10:45, right?

10:38:11

25 THE CLERK: Yes.

1 (Recess.)

2 THE COURT: You can sit, I'm going to stand. I'm  
3 tired of sitting. After three joint replacements, I need to  
4 stand every once in a while.

10:42:30

5 Okay. I actually think from reviewing my notes, we  
6 actually covered everything that I think we needed to cover  
7 today. Here's where I am on this, with respect to plaintiffs  
8 recently served discovery, I'm going to deal with that on these  
9 motions for protective order. There's one motion that's a  
10 protective order. Defendants are going to file another one.

10:42:47

11 If that one needs to be briefed in any way more than what  
12 you've already given me in the notices for this hearing, you  
13 could agree to a schedule for that. I would bet it doesn't  
14 have to be, but I don't know, I'll leave it to you. Right now,  
15 I'm not taking over your case from you, because I always think  
16 it's better for the lawyers to be able to litigate the case and  
17 try it the way they like to do it without a judge who may not  
18 have all the pieces in his or her mind, but I'm going to deal  
19 with that discovery on the motion for protective order. And  
20 I'm going to go back and I'm going to read those earlier  
21 briefs.

10:43:11

10:43:31

22 I will also say that this is an opportunity for you  
23 all to talk; okay. There are some things going on here, and I  
24 don't fully appreciate them all, but I don't know that a world  
25 in which there's a fast locomotive going down to come to trial,

10:43:53

1 coexists really well with a world where we're now starting  
2 written discovery again and trying to get all your depositions  
3 done and try to get all these other documents produced, I don't  
4 know that. You could talk to each other. I'm not going to  
5 force that conversation. If there are adjustments to a case  
6 management schedule that need to be done, you can propose them,  
7 all right. Or you could propose, you know, we've talked about  
8 this but we disagree about that. But I think some of this is  
9 within the realm of things you could talk about.

10 So the discovery issues, I'm going to deal with on a  
11 motion for protective order and you could also talk about how  
12 those fit into a larger schedule.

13 On the issue of the motion to reconsider, Reynolds is  
14 going to think about whether you want to file something on the  
15 19th or whether it's a scope issue. And if you file something  
16 on the 19th that also includes scope, you got to give both  
17 sides a little opportunity to tell me what's going on with  
18 scope; okay?

19 And if you need more time to file something about  
20 scope, you could agree with that, too, but just I would like  
21 you to file something so I know when stuff is coming. It could  
22 even be a stipulation or, you know, agreed briefing schedule,  
23 or something like that, but I need to know when that stuff is  
24 coming in.

25 I will set a date for a hearing on the clawback issue.



1 The privilege issue that I talked about, I have a lot of balls  
2 in the air right now in the early part of next year, so I got  
3 to figure out when I could do that. I'll have Brenda send a  
4 proposal to you with respect to that and we'll get a date that  
5 works.

6 When you have run to ground the data security, data  
7 integrity and system performance issue, file something, either  
8 one document that says this is the pro and con on this, this is  
9 what each side says, or give me a briefing schedule and I'll  
10 enter it; okay. Because once you've run that to ground, then I  
11 may need to get involved. And from either side's perspective,  
12 if you can't talk to each other on this and somebody wants to  
13 say, we can't talk, we want a hearing on this or something, let  
14 me know. I prefer you talk.

15 I think I know all the motions in front of me. I do  
16 agree that some of this stuff is going to become a little bit  
17 clearer once you got the motions to dismiss decided. And I'm  
18 sure Judge Dow is doing his best to get those to you. I think  
19 once we have that and after people have been able to review  
20 it, if the case is still here, we'll know a lot more about what  
21 the case looks like, and some of these things can then fall  
22 into place a little bit better, I recognize that. I don't feel  
23 a need right now to have a hearing on a case schedule until we  
24 see some of that. Mr. Nemelka, I'll hear from you one second  
25 on that.

1 In terms of an extension of discovery schedule, again,  
2 once we get to that point, I'm hoping that we have that  
3 discussion after there's a motion to dismiss ruling, but if I'm  
4 going to consider any extensions of the schedule, fact  
5 discovery as it currently exists, I'm going to have to have a  
6 lot more information about what's happened already, what hasn't  
7 happened, why it hasn't happened, what needs to happen, and how  
8 much time people feel we're going to need to have; okay.

9 Anything I haven't dealt with right now? I mean, I  
10 know I haven't dealt with some stuff, but at least I have  
11 addressed it in terms of some order.

12 MS MILLER: Not from our perspective, Your Honor.

13 MS WEDGORTH: Not here, Your Honor.

14 MR NEVELKA: No, Your Honor. We just raised the  
15 issue about the depositions that defendants have noticed -- or  
16 taken a notice of 15 depositions, 14 of which are from my  
17 clients and only one from the dealership and we -- you know,  
18 they said they needed 30, and we were wondering if we could  
19 have it more proportional. We were just wondering if the Court  
20 had any thoughts on that.

21 THE COURT: I don't. I mean, that really just soft.  
22 Yeah, that's what they've done. I mean, I hear what you're  
23 saying, you're kind of throwing dirt on them that they said  
24 they wanted a proportional and now they're not doing it  
25 proportional. I don't care, they got a number of depositions.

1 How they allocate them is up to them, or whether they're going  
2 to ask for more, I don't know, but I'm not going to deal with  
3 it now.

4 MR NEVELKA: Okay.

10:48:48

5 THE COURT: But that makes me step back for one second  
6 because at some point during this hearing I was going to ask  
7 each side, what did you want me to do? From the plaintiffs'  
8 perspective, what did you want to come out of here with? So  
9 tell me.

10:48:59

10 MR NEVELKA: We wanted not necessarily an order, but  
11 a suggestion from the Court that they should use their  
12 depositions more proportionally as they said they would.

13 THE COURT: Okay. I refuse to do that; okay.

14 MR NEVELKA: Okay.

10:49:12

15 THE COURT: Next thing you want to come out of here  
16 with? I mean, when you were taking a shower this morning, what  
17 were you thinking you wanted to have happen? I mean, I just --

18 MR NEVELKA: I understand.

10:49:21

19 THE COURT: I mean, I'm just wondering, because I  
20 don't know that --

21 MR NEVELKA: The other thing that we'd like to come  
22 out of here is, I would like to have that discussion with  
23 defendants about the dates on the case schedule, and if there's  
24 any room for interrogatories, or, you know, just very limited  
25 number, I would like to have that discussion with defendants.

10:49:34

1 You know, we may disagree, but we do feel like -- and  
2 understood that they've been waiting for motions to dismiss  
3 rulings, but we do think that we could at least start those  
4 discussions before those rulings come down.

10:49:49

5 THE COURT: Well, I would say this to defendants on  
6 that, to the extent -- I understand a response that says, we  
7 can't really have this discussion until we know what the  
8 motions to dismiss, how that's going to affect the shape of the  
9 table. But I also understand, try to talk about this now.

10:50:06

10 I mean, there's several moving pieces here, one of  
11 them is all this discovery that the plaintiffs want to serve;  
12 okay. And you're response to that is: (a), it's untimely.  
13 But, (b), we can't do this and take all the depositions at this  
14 point in time. I personally, and I think most judges, and I  
15 think Judge Dow, has a preference for deciding cases on the  
16 merits rather than on a foot fault or something like that, or,  
17 you know, too many times you broke the racquet or something  
18 like that. So there's an opportunity here for you to talk  
19 about this, but both sides have to give something on that;  
20 right?

10:50:23

10:50:40

21 I mean, if the plaintiffs come in and say we want the  
22 current case schedule, we're not willing to move on anything,  
23 we want you to respond to all the written discovery that we  
24 just served and we want to be done on April 15th so Authenticom  
25 can get out of Dodge and try this case, then you're going to

10:50:49

1 have some problems, I think, and you're not going to have a  
2 receptive audience.

3 But I would encourage that discussion to happen. I  
4 would encourage defendants to have the discussion as one thing  
10:51:02 5 being, you know, this is all subject to what happens with the  
6 motions to dismiss because, obviously, you don't have to do  
7 anything if your motions to dismiss are granted in full, but if  
8 they're granted in part, then there's some stuff that's  
9 happening and then you got counterclaims.

10:51:17 10 But I think having that discussion and having you guys  
11 control the case rather than having somebody here, because  
12 although I'm not taking control of your case right now, I  
13 could, okay, and so could Judge Dow, and that I don't think is  
14 the preferred way to go.

10:51:32 15 Okay. So anything else from the plaintiffs that you  
16 wanted to come out of here with?

17 MS WEDGORTH You addressed the issues on the expert  
18 reports, those dates have to move given the discovery schedule  
19 set.

10:51:41 20 THE COURT: Okay. So on the defendants' schedule,  
21 other than an order that quashed all plaintiffs' discovery  
22 served, which I didn't do but at least I created I hope a  
23 little bit of a rational process on that, what did you want to  
24 come out of here with?

10:51:55 25 MS MILLER: Short of that, Your Honor, I think we've

1 addressed the major issues. We now understand -- assuming we  
2 file our motion for protective order, that will stay our  
3 obligations to respond to the interrogatories until such time  
4 as Your Honor rules. So long as that's the understanding, then  
5 I think Your Honor has addressed the things that we needed to  
6 have addressed at this particular moment

7 THE COURT: I usually take the position that a firing  
8 of a motion, I don't know if it stays it but it's a response  
9 and then the Court has to do something about it. And, again,  
10 if there's a briefing schedule, let me know.

11 What I would like you to do, if you can, is send an  
12 e-mail to Brenda, please, and talk about it together. On the  
13 docket of like 400, 500 stuff now, could you just agree amongst  
14 yourselves what documents that have been filed on the docket  
15 are relevant to the setting of that case management schedule on  
16 May 7th so that I'm sure that I'm reading the right stuff and I  
17 don't have to hunt about that. And if there was a hearing date  
18 or more than one hearing date at which these things were  
19 addressed but we don't have a transcript on them, could you at  
20 least tell me what those hearings dates are so I could get  
21 those transcripts prepared.

22 MS MILLER: We will, Your Honor.

23 THE COURT: Okay. And could you do that -- I know  
24 some people are traveling, but I'd love to have it today or  
25 first thing tomorrow morning.

1 MS MILLER: We'll make it happen, Your Honor.

2 THE COURT: Okay.

3 MS WEDGORTH Same here, Your Honor.

4 THE COURT: Okay. Thank you. I think I have to go to  
5 my other cases now.

10:53:23

6 MS WEDGORTH Thank you, Your Honor.

7 MR NEVELKA: Thank you, Your Honor. Appreciate it.

8 THE COURT: Safe travel back for those of you who are  
9 traveling.

10:53:38

10 \* \* \* \* \*

11

12

13 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE  
14 RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER

15

16 /s/ Blanca I. Lara December 13, 2018.

17

18

19

20

21

22

23

24

25